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No. 86-476

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Petitioner,

v.

STATEN ISLAND RAILROAD CORPORATION (SIRC), *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF IN OPPOSITION FOR RESPONDENT STATEN ISLAND RAILWAY CORPORATION (SIRY)

WILLIAM F. SHEEHAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000
Counsel of Record
for Staten Island
Railway Corporation

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QUESTION PRESENTED

Whether an action to nullify a completed sale of a railroad that the Interstate Commerce Commission has approved by final order would "enjoin, set aside, suspend (in whole or in part), or determine the validity of" that final order and hence falls within the exclusive jurisdiction of the courts of appeals under 28 U.S.C. §§ 2321 and 2342.

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BRIEF IN OPPOSITION FOR RESPONDENT STATEN ISLAND RAILWAY CORPORATION (SIRY)*

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 792 F.2d 7. The opinion of the district court (Pet. App. 1b-11b) is not reported.

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* In compliance with Rule 28.1 of the Rules of this Court, respondent SIRY states that it is wholly owned by The New York, Susquehanna and Western Railway Corporation, which in turn is wholly owned by Delaware Otsego Corporation; that it has no subsidiaries; and that it has no other publicly held affiliates.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1986. The petition for a writ of certiorari was filed (pursuant to extensions granted) on September 23, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Sections 2321 and 2342 of Title 28 of the U.S. Code are reproduced at Pet. App. 8d and 9d.

STATEMENT

1. *The ICC proceedings.* In November 1984, respondent Staten Island Railroad Corporation ("SIRC") advised the Interstate Commerce Commission and petitioner Railway Labor Executives' Association ("RLEA") of its intent to abandon its service. (Pet. App. 3b.) In December 1984, SIRC filed a formal request for abandonment approval under 49 U.S.C. § 10903, which the Commission granted on February 7, 1985. (*Id.* 3b-4b.) Before the effective date of the abandonment, however, the New York, Susquehanna and Western Railway Corporation ("NYS&W") made an offer to purchase the line pursuant to 49 U.S.C. § 10905. (*Id.* 4b.) Subsequently NYS&W substituted respondent Staten Island Railway Corporation ("SIRY"), a newly formed subsidiary of NYS&W, as the proposed purchaser in its stead. (*Id.*)

The ICC then suspended the effective date of the certificate of abandonment, and on April 24, 1985 served its order approving the purchase by SIRY of SIRC's lines and dismissing the abandonment application. (*Id.* 5a.)[1]

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[1] SIRY also acquired certain trackage rights from SIRC over a line of the Staten Island Rapid Transit Operating Authority. RLEA petitioned the court of appeals for review of the ICC approval of the purchase and of the trackage rights transactions. Those petitions were denied, *RLEA* v. *United States*, 791 F.2d 994 (2d Cir. 1986), and RLEA has not sought review here of those rulings. (Pet. 5, n.2.)

RLEA participated throughout the Commission proceedings. It successfully sought imposition of *Oregon Short Line* employee protective conditions on SIRC in connection with the initial abandonment application. (*Id.* 3a-4a.) It also sought the imposition of conditions on SIRC and SIRY in connection with the sale under § 10905. (*Id.* 5a.) The Commission in approving the sale, however, did not impose any conditions, in keeping with its view that the Act requires, in a § 10905 transaction, the dismissal of the § 10903 abandonment application and the approval of the sale without imposition of protections. (*Id.*)

While the ICC proceedings were pending, four labor unions, which represented certain SIRC employees for purposes of collective bargaining under the Railway Labor Act, served so-called "§ 6 notices" on SIRC proposing changes in their collective bargaining agreements.[2] The notices were virtually identical to one another in expressly proposing, among other things, that SIRC provide *Oregon Short Line* protections to its employees in the event the Commission approved the sale under § 10905. (*Id.* 3a.)

The first of those notices was served on SIRC in December 1984. SIRC responded that it would not bargain over the notices because they made proposals that were not subjects of mandatory bargaining. (Pet. 6.) Thus, the unions and the RLEA were on notice from late 1984 or early 1985 of SIRC's refusal to bargain over the notices.

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[2] Section 6 of the Railway Labor Act, 45 U.S.C. § 156, provides in relevant part—

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions * * *."

After those notices were received, SIRC and SIRY filed with the Commission a "Request for An Order Approving A Transaction" asking that the Commission approve the § 10905 sale in an order that "should also specify * * * that its exclusive and plenary jurisdiction over this transaction exempts the parties from the aforesaid 'Section 6' notices which seek to preclude the consummation of this transaction." [3] RLEA in response argued that the Commission had no power to enter such an order, and, in addition, that "the Commission should deny Applicants' request for an order permitting immediate consummation [of the sale]. Should the Commission decide to grant Applicants' request, RLEA will require time in which to seek additional relief before the carriers implement the transaction * * *." [4]

2. *The rulings below.* On April 24, 1985, the ICC approved the sale under § 10905 and on that day the sale was consummated. (*Id.* 6a.)[5] On April 25 the RLEA brought this action, seeking a declaratory judgment that SIRC violated the Railway Labor Act by refusing to negotiate over the § 6 notices, and an injunction requiring negotiation and the restoration of "the status quo which existed prior to the sale." (Pet. 8.)[6] The district court

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[3] March 18, 1985 Request for an Order Approving a Transaction to Permit Continued Rail Service and Reply to Comments, p. 5. Item No. 31 of the ICC Certified Index in *RLEA* v. *United States, supra* note 1.

[4] April 8, 1985 Opposition of Railway Labor Executives' Association to Applicants' Request for An Order Approving a Transaction to Permit Continued Rail Service, pp. 9-10. Item 34 of the Certified Index in *RLEA* v. *United States, supra* note 1.

[5] On the following day SIRY invited the former employees of SIRC to apply for 18 available positions. (Affidavit of Henry J. Nichols, reproduced at p. 119 of the Joint Appendix in the Court of Appeals.)

[6] RLEA named SIRY as a defendant even though SIRY had never received, let alone refused, a § 6 bargaining request from any union, nor been a party to nor changed the terms of any labor contract.

dismissed the complaint, ruling that it was a collateral attack on the Commission's approval of the sale and hence was beyond the court's jurisdiction under 28 U.S.C. §§ 2321 and 2342, which confer exclusive jurisdiction in courts of appeals to review ICC final orders. (Pet. App. 1b-11b.) The court reasoned:

> "RLEA requests relief which would order SIRC to resume railroad operations and return the furloughed employees of the various unions to their prior work under the conditions and terms set forth in their respective collective bargaining agreements. In seeking such relief, the RLEA asks the Court for relief that it cannot provide. There is no meaningful status quo order that the Court could enter against SIRC that would not involve SIRC's resumption and continued provision of railroad services * * * [which] would reverse the ICC order mandating the sale by SIRC of its rail lines to SIRY—a sale which, when consummated, terminated SIRC's authority to conduct rail operations. As against the buyer railroad SIRY, the RLEA concedes that imposition of employee protective provisions or status quo reemployment of the furloughed employees would overturn the ICC order which approved the sale to SIRY without imposing any such conditions." (*Id.* 8b-9b.)

For those reasons the district court concluded that the complaint was "essentially one to annul or set aside the order of the [ICC]" since it asked that the defendant carriers "be enjoined from doing what the order specifically authorizes, which is the equivalent of asking that the order be adjudged invalid and set aside." (*Id.* 9b; inner quotations and citation omitted.) The court also noted that, although RLEA had couched its claims "in terms of RLA violations, it seeks the same relief urged unsuccessfully directly upon petition to the ICC." (*Id.* 10b.)

The court of appeals affirmed the dismissal of the complaint, although on a somewhat different basis. (Pet.

App. 1a-9a.) It held that the district court had jurisdiction over the complaint, making dismissal under Fed. R. Civ. Pro. 12(b)(1) inappropriate, but that the district court could not grant the relief requested by RLEA, meaning that the complaint failed to state a claim and therefore should have been dismissed under Rule 12(b)(6). "Under no circumstances," the court ruled, could RLEA's request "to require SIRC to continue operation of its line with its present employees * * * be granted without recission or modification of the ICC's order." (*Id.* 8a.)

REASONS FOR DENYING THE WRIT

The rulings of the courts below—that the relief sought by petitioner could be granted only by a court of appeals upon direct review of the ICC's final order—were correct applications of plain statutory commands, and further review by this Court is unwarranted. The dismissal came about as the direct result of petitioner's decision to sue in district court *after* the Commission had unconditionally approved the rail transaction and it had been consummated. Contrary to petitioner's suggestion, the result does not reflect a refusal by federal courts to enforce the Railway Labor Act, but rather an unarguably correct reading of §§ 2321 and 2342 to vest exclusive jurisdiction in courts of appeals over requests for relief that would require suspension or modification of final Commission orders.

A. Dismissal Was Required Under §§ 2321 and 2342.

Petitioner seeks to portray this case as presenting a major collision between the Interstate Commerce Act and the Railway Labor Act. The relationship between those two statutes is at issue in *Interstate Commerce Commission* v. *Brotherhood of Locomotive Engineers*, Nos. 85-792 and 85-793. But that relationship is not an issue here, and this case is not a tag-along to any case now before the Court, either on writs granting or petitions

seeking certiorari. Rather, this case is about the proper application of 28 U.S.C. §§ 2321 and 2342 to petitioner's complaint.

As the Second Circuit correctly ruled, those provisions (which go almost unmentioned in the petition) required the dismissal of petitioner's suit. They provide that "a proceeding to enjoin or suspend, in whole or in part * * * [an] order of the Interstate Commerce Commission shall be brought in the court of appeals" (§ 2321), and that "[t]he court of appeals * * * has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of * * * all * ** final orders of the" Commission (§ 2342). This Court and the lower federal courts have consistently ruled that these provisions (or, more precisely, their predecessors in the Urgent Deficiencies Act) deprive single judge district courts of jurisdiction over actions seeking to enjoin private parties from doing what the Commission by final order has deemed that they may (or must) do.[7] Even should such suits "not expressly pray that the [Commission] order be annulled or set aside," they nonetheless "essentially" seek "to annul or set aside the order of the Commission" and consequently may not be brought in district court. *Venner* v. *Michigan Central R.R.*, 271 U.S. 127, 130 (1926); *Lambert Run Coal Co.* v. *Baltimore & Ohio R.R.*, 258 U.S. 377, 381 (1922); *Brotherhood of Locomotive Engineers* v. *Boston & Maine Corp.*, 788 F.2d 794, 801 (1st Cir. 1986), *cert. denied*, No. 85-2153 (Oct. 10, 1986); *B.F. Goodrich Co. v. Northwest Industries*, 424

[7] Under the Urgent Deficiencies Act of 1913, 38 Stat. 208, 220, final Commission orders other than for the payment of money were required to be heard by three-judge district courts. In 1975, the three-judge court provision was abolished and review given exclusively to the courts of appeals by including the Commission among the federal agencies subject to the Judicial Review Act of 1950, 28 U.S.C. § 2341 *et seq.* (the Hobbs Act). Pub. L. 93-584, 88 Stat. 1917. See House Report No. 93-1569, 93rd Cong., 2d Sess., reprinted at 1974 U.S. Code Cong. & Admin. News 7025.

F.2d 1349, 1352-1354 (3d Cir. 1970) ("The statutory procedure for review is applicable although an order is not directly attacked—so long as the practical effect of a successful suit would contradict or countermand a Commission order.") (citing cases).

Those decisions support the dismissal of petitioner's complaint. The relief sought—an injunction requiring respondents SIRC and SIRY "to preserve the status quo which existed prior to the sale" (Pet. 8)—would if granted have required the completed sale to be undone, and to that extent surely would have "enjoin[ed], set aside, suspend[ed] (in whole or in part), or determine[d] the validity of" the Commission's order unconditionally approving the sale.[8]

There is no exception to the commands of those provisions for suits alleging Railway Labor Act violations if, as here, the relief sought "would contradict or countermand a Commission's order." In each of the decisions cited above the plaintiff sought injunctive relief against private party defendants to forestall alleged violations of state or federal law. In each case jurisdiction was found wanting, without regard to the merits of the plaintiff's claims.[9] Indeed, when the court of appeals in *Lam-*

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[8] Petitioner suggests that the Commissioner's April 24 order permitted but did not mandate the sale, and that therefore the district court could have directed that the sale be undone without trenching on the agency's order. Pet. 10 n.7. Even if the premise were correct (the court of appeals held not), the conclusion is wrong, for a judicial decree forbidding parties from doing what the agency order permits necessarily sets aside or suspends that order in whole or in part. See *Venner, supra*, 271 U.S. at 131 ("That the order is not mandatory but permissive makes no difference in this regard.").

[9] In *Venner* a minority shareholder of the defendant railroad alleged that the railroad's financing of a purchase of locomotives (approved by the Commission) would violate state law. In *Lambert* a coal company alleged that the defendant railroad's provision of coal cars pursuant to Commission order violated the Act to Regulate

bert based its ruling on both the merits and jurisdictional grounds, this Court ruled that the appellate court "had no occasion to pass upon the merits of the controversy" (258 U.S. at 381). Accordingly, the district court in this case was right to "have dismissed the bill as soon as it became apparent that the suit was one to set aside an order of the Commission" (*id.* 383), and further review by this Court on that score is unwarranted.[10]

B. Petitioner Lost Its Right to Adjudication of the Merits of Its Claims By Suing Too Late In the District Court and By Not Raising Those Claims On Direct Review in the Court of Appeals.

RLEA repeatedly, but wrongly, contends that the decision below has "denied [labor] access to the courts to enforce the Railway Labor Act." (Pet. 12; see also *id.* 14, 17.) RLEA was free before April 24 to sue in district court but declined to do so. Had it done so the district court would have been empowered to consider its claims on their merits.[11] But since after that date its

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Commerce. In *Boston & Maine* a union argued (as here) that the defendant railroad's operational changes approved by the Commission violated the Railway Labor Act. In *B.F. Goodrich* the plaintiff alleged that purchase of its stock by the defendant, approved by the Commission, would violate the Interstate Commerce Act.

[10] The court of appeals below may have been correct in ruling that the district court had jurisdiction over RLEA's complaint (which in terms alleged violations of the Railway Labor Act), and that the complaint should have been dismissed for failure to state a claim since it sought relief that only a court of appeals can grant. See generally *Bell* v. *Hood*, 327 U.S. 628 (1946). But in all events dismissal was the correct result.

[11] SIRC advised RLEA in November 1984, that it intended to abandon its lines, and upon receipt of the first § 6 notice in December 1984 stated that it would not bargain over the proposals therein. (Pet. 6.) Yet RLEA waited for months to pass and sued only after the Commission had approved and the carrier respondents had carried out the sale. Prior to the ICC's order approving the sale,

requested relief would have conflicted with the ICC order, RLEA was required, for the reasons stated above, to pursue its claim in the court of appeals.

RLEA did not do so. It did petition the court of appeals for review of the Commission's order (see note 1, *supra*), but it raised no Railway Labor Act claims in that review proceeding. It was free to have raised such claims, since they were before the Commission. Cf. *Brotherhood of Locomotive Engineers v. Boston & Maine Corp.*, *supra*. In response to a request by the carriers (see pages 3-4, *supra*), RLEA argued that the Commission had no authority to issue an order preempting the Railway Labor Act, and that—

> "the Commission should deny Applicants' request for an order permitting immediate consummation. Should the Commission decide to grant applicant's request, RLEA will require time in which to seek additional relief before the carriers implement the transaction in contravention of the employees' statutory rights." [12]

The Commission's order of approval of April 24 did, however, permit the carriers to consummate the sale transaction forthwith.

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the district court would have had power to consider the merits of RLEA's claims regarding the "accommodation" of the Railway Labor Act and "the policies of the Interstate Commerce Act." (Pet. 16.)

We believe that RLEA would not have succeeded in such a suit, for in our view labor-management disagreements arising out of rail applications to the Commission for approval of transactions within its jurisdiction must be resolved according to the procedures prescribed by the Interstate Commerce Act rather than the Railway Labor Act. The reasons for this view are stated at length in the briefs submitted by and on behalf of the petitioners in *Interstate Commerce Commission* v. *Brotherhood of Locomotive Engineers*, Nos. 85-792 and 85-793. Our point here is simply that in such a suit by RLEA the district court would not have been forbidden by §§ 2321 and 2342 from reaching the merits of RLEA's claims.

[12] Pages 9-10 of RLEA Opposition. See note 4, *supra*.

Thus, the relationship between the Railway Labor Act and the Interstate Commerce Act was at issue before the Commission, and the Commission's order allowed immediate consummation, contrary to RLEA's request for time in which "to seek additional relief." Yet in the court of appeals on direct review RLEA neither raised any Railway Labor Act issue nor urged that the Commission's refusal to postpone the effectiveness of its order was contrary to the standards prescribed by the Interstate Commerce Act for Commission approval of sales under § 10905.

In sum, RLEA could have sought a ruling on the merits of its claims under the Railway Labor Act either (a) in the district court before the issuance of the Commission's order, or (b) in the court of appeals on direct review of that order. Its deliberate choice to eschew both courses and wait to sue in district court until after the Commission had acted is the reason why it has found itself without an adjudication of its claims on their merits.

C. The Decision Below Does Not Conflict With *Telegraphers* or the *Galveston Wharves* Cases.

There is no conflict between this case and *Order of Railroad Telegraphers* v. *Chicago & North Western Ry.*, 362 U.S. 330 (1960)—which RLEA concedes "is not squarely on point" (Pet. 17)—or *United Industrial Workers* v. *Board of Trustees of Galveston Wharves*, 351 F.2d 183 (5th Cir. 1965) (and related decisions). None of those cases involved a challenge to actions taken under authority of Commission order. None involved §§ 2321 and 2342. They dealt generally with the scope of the duty to bargain under the Railway Labor Act. As shown above, the courts below in this case rightly refused to reach the merits of petitioner's Railway Labor Act claims. Hence there is no conflict for this Court to resolve.[13]

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[13] Moreover, RLEA is incorrect in urging that the district court could have, without interfering with the Commissions' order, done

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM F. SHEEHAN
SHEA & GARDNER
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
(202) 828-2000
Counsel of Record
for Staten Island
Railway Corporation

December 24, 1986

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as the Fifth Circuit did in *Galveston Wharves* and "direct both that the carrier bargain and that the employees be reinstated with back pay during the bargaining." (Pet. 19.) The carrier in *Galveston Wharves* had not ceased to exist. SIRC, by contrast, ceased being a carrier when it did what the Commission ordered it could do, and thus was no longer subject to the Railway Labor Act. See 45 U.S.C. § 151 First.